2013 IL App (4th) 130433-U

NO. 4-13-0433

FILED
September 25, 2013
Carla Bender
4th District Appellate
Court, IL

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

JACOB HUPP,	)	Appeal from
Petitioner-Appellee and	)	Circuit Court of
Cross-Appellant,	)	Sangamon County
v.	)	No. 12F23
MARIA ROSALES,	)	
Respondent-Appellant and	)	Honorable
Cross-Appellee.	)	April Troemper,
	)	Judge Presiding.

JUSTICE APPLETON delivered the judgment of the court.
Presiding Justice Steigmann and Justice Pope concurred in the judgment.

ORDER

¶ 1 *Held*: (1) A factual finding on which the custody award is based is against the manifest weight of the evidence, making the custody award an abuse of discretion.

(2) The award of retroactive child support was an abuse of discretion in that it was based in part on money the parent's father had given him on condition that the parent spend it on tuition and textbooks and given this limiting condition of the gift, the gift did not facilitate the parent's present ability to support the child.

¶ 2 Petitioner, Jacob Hupp, and respondent, Maria Rosales, are the parents of A.R. Jacob and Maria never married, and they now live apart. (We will follow the example of the briefs by referring to the parties by their first names.)

¶ 3 The trial court awarded the parties "joint legal custody" of A.R. and made Jacob the "primary residential custodian," even though 17-month-old A.R. had lived with Maria since birth. (Actually, it is questionable whether the court awarded joint custody in the true sense, considering that the parties never entered into a joint parenting agreement and considering that

Jacob alone had the final say on major decisions regarding A.R. See 750 ILCS 5/602.1(a) (West 2012).)

¶ 4 The trial court also ordered Jacob to pay Maria retroactive child support calculated on the basis of the monetary gifts that Jacob, who was unemployed, had been receiving from his father, Dean Hupp. The court deviated downward, however, from the statutory guideline. See 750 ILCS 5/505(a)(1), (a)(2) (West 2012).

¶ 5 Both parties appeal from certain provisions of the trial court's order. Maria appeals from the provisions awarding joint custody and making Jacob the primary residential custodian. She appeals from the week-on, week-off visitation schedule, contending that it will deprive A.R. of any sense of a permanent physical residence. She also appeals from the downward deviation in the amount of child support. Jacob appeals the provision requiring him to pay child support. He contends he should not have to pay any child support at all.

¶ 6 We reverse the provision making Jacob the primary residential custodian of A.R., because the factual finding on which that provision is based is against the manifest weight of the evidence. Removing A.R. from the custody of the parent with whom she had lived all her life was an abuse of discretion unless there was a good reason for this change. The reason on which the court relied was against the manifest weight of the evidence, and we are aware of no alternative reason for uprooting A.R.

¶ 7 We also reverse the award of retroactive child support because it is based in part on certain conditional gifts to Jacob, namely, money for tuition and books, that—because of the limiting condition that these gifts had to be spent on tuition and books—do not conform to the supreme court's definition of "income," in that the gifts did not facilitate Jacob's present ability to

support A.R. Consequently, child support must be redetermined. We remand the case for that purpose and also for the purpose of determining a reasonable visitation schedule for Jacob.

¶ 8 I. BACKGROUND

¶ 9 The parties used to live together in Maria's parents' residence, in Westchester, Cook County. They both were students at Benedictine University, and it was during this time that A.R. was born. Jacob immediately signed an acknowledgment of paternity, and it is undisputed that he is the girl's father. About two months after A.R.'s birth, the parties had a falling out, and Jacob moved back to Springfield.

¶ 10 On January 17, 2012, after encountering difficulties obtaining visitation of A.R., Jacob filed a petition in the Sangamon County circuit court. The petition was entitled "Petition To Establish Parent/Child Relationship and Other Relief." Therein, he alleged he was the father of A.R., born on November 10, 2011, and that Maria was the child's mother. He sought a court order declaring him to be A.R.'s father, granting him sole custody of A.R., and directing Maria to pay child support.

¶ 11 In January 2013, the trial court held a trial on Jacob's petition. It emerged in the trial that Jacob and Maria earned only a minuscule amount of income and that they both were essentially unemployed and dependent on their parents for support. Jacob's father, Dean Hupp, was paying Jacob's way through college (Benedictine University when Jacob lived in Westchester and, subsequently, Lincoln Land Community College when he returned to Springfield).

¶ 12 It also emerged that Maria and her parents were illegal aliens. Petitioner's exhibit No. 3 is a letter, dated June 13, 2012, from an immigration lawyer to Maria's lawyer. The letter reads as follows:

"This is in response to the questions that you have regarding the immigration status of Maria Fernanda Rosales (DOB 01.11.1992). Ms. Rosales is waiting for an immigrant visa to become available to her based on the family petition that was filed for the benefit of her mother Lourdes Sanchez on April 17, 2003. The approximate wait for similar petitions is approximately 16 years so currently it's about a seven year wait for Ms. Sanchez and her family to be eligible for an immigrant visa to the United States.

Additionally, Ms. Rosales has been residing in the United States since approximately November 1995 when she was three years old. Ms. Rosales does not have a criminal history. As such, should the U.S. Department of Homeland Security seek to remove Ms. Rosales from the United States she qualifies for the relief of cancellation of removal under section 240A(b) of the Immigration and Nationality Act which states:

> The Attorney General may cancel removal of, and adjust to the status of an alien lawfully admitted for permanent residence, an alien who is inadmissible or deportable from the United States if the alien: (A) has been physically present in the United States for a continuous period of not less than 10 years immediately preceding the date of such application; (B) has been a person of good moral character

> during such period; (C) has not been convicted of an offense under 8 U.S.C. § 1182(a)(2), or 1227(a)(3) of this title; and (D) establishes that removal would result in exceptional and extremely unusual hardship to the alien's spouse, parent, or child, who is a citizen of the United States or an alien lawfully admitted for permanent residence. I.N.A. § 240A(b).
>
> Since Ms. Rosales qualifies to seek the relief of cancellation of removal, if she were to be placed in Removal Proceedings her case would take at least 2 to 3 years to be heard by an immigration Judge. While her case is pending before the Immigration Court she may not be removed from the United States."

¶ 13 After hearing the evidence, the trial court declared Maria and Jacob to be A.R.'s parents and awarded "joint legal custody" of A.R. to them both. The court made Jacob, however, the "primary residential custodian" of A.R., with liberal visitation rights for Maria. The custody order stated as follows:

> "2. Considering all statutory factors as set forth in 750 ILCS 5/602, it is in the best interest of [A.R.] that joint legal custody be awarded to the parties with Jake being the primary residential custodian, subject to reasonable visitation of Maria as set forth in this Order. The Court finds that although these young parents have at times acted immaturely since their daughter's birth,

> both parents love their daughter very much and are fit and proper. The Court is also mindful that there is a presumption in favor of the current custodial parent based on stability and sense of continuity, but believes stability and continuity can still be achieved with the change in custody without harm or negative impact to [A.R.] given the minor's young age. ***
>
> The Court's award of custody is not based on Maria's immigration status, but rather finds Jake to be the more appropriate custodial parent in light of the third statutory factor—given the other statutory factors are either equal or not applicable."

¶ 14 The trial court did not order Maria to pay child support "at this time," but the court ordered Jacob to pay retroactive child support to Maria on the basis of the amounts Dean Hupp had been giving to Jacob every month to finance his college education and to pay his living expenses. The court's order provided:

> "The Court finds that the gifts bestowed on Jake by his parents constitute income and shall be used in determining retroactive child support. See *In re Marriage of Rogers*, 213 Ill. 2d 129, 136, 820 N.E.2d 386 (2004). Based on the testimony and evidence received, the Court sets child support at $767.45 retroactive to November 10, 2011. See 750 ILCS 45/14. The Court further finds, however, that a downward deviation of $300 per month is appropriate based on Jake's status as a college student at the time of [A.R.'s] birth to the present, in addition to Jake's independent

> contributions to [A.R.'s] needs. Thus, child support is set at $467.45 retroactive to November 10, 2011 and terminating April 24, 2013, resulting in an arrearage of approximately $7,946.65, excluding any statutory interest."

¶ 15 Evidently, in arriving at the figure of $767.45 per month, the trial court was convinced by an argument Maria had made. In her written closing argument to the court, she described the monetary gifts Dean Hupp had been giving his son, the bills he had been paying for him, and the things he had been buying for him:

> "In this case, it is appropriate that Petitioner be required to pay child support in the amount of $767.45 per month prospectively as well as retrospectively from [A.R.'s] birth ($1,203.93, the average deposited into Petitioner's account each month pursuant to Exhibit E; $800.00, rent per month for Petitioner's townhome; $100, cable per month; $150, utilities per month; $1,333.33, Petitioner's $16,000 car purchased with cash dividend divided by 12 months; $250, 3 international, all-inclusive vacations per year divided by 12 months (totaling approximately $1,000.00 each) = $3,837.26 net income per month multiplied by 20 percent)."

¶ 16 II. ANALYSIS

¶ 17 A. Custody of A.R.

¶ 18 1. *Her Interaction and Relationship With Her Parents and Relatives*

¶ 19 Section 14(a)(1) of the Illinois Parentage Act of 1984 (750 ILCS 45/14(a)(1) (West 2012)) requires the court to determine custody and child support in accordance with the relevant provisions of the Illinois Marriage and Dissolution of Marriage Act (750 ILCS 5/101 to 802 (West 2012)). Section 602(a) of the Illinois Marriage and Dissolution of Marriage Act (750 ILCS 5/602(a) (West 2012)) says the court "shall determine custody in accordance with the best interest of the child." The statute then provides a nonexclusive list of factors the court shall consider when deciding what custodial arrangement would be in the child's best interest. *Id*. Those factors are as follows:

> "(1) the wishes of the child's parent or parents as to his custody;
>
> (2) the wishes of the child as to his custodian;
>
> (3) the interaction and interrelationship of the child with his parent or parents, his siblings and any other person who may significantly affect the child's best interest;
>
> (4) the child's adjustment to his home, school and community;
>
> (5) the mental and physical health of all individuals involved;
>
> (6) the physical violence or threat of physical violence by the child's potential custodian, whether directed against the child or directed against another person;
>
> (7) the occurrence of ongoing or repeated abuse as defined in Section 103 of the Illinois Domestic Violence Act of 1986 [(750

ILCS 60/103 (West 2012))], whether directed against the child or directed against another person;

(8) the willingness and ability of each parent to facilitate and encourage a close and continuing relationship between the other parent and the child;

(9) whether one of the parents is a sex offender; and

(10) the terms of a parent's military family-care plan that a parent must complete before deployment if a parent is a member of the United States Armed Forces who is being deployed." 750 ILCS 5/602(a)(1) to (a)(10) (West 2012).

¶ 20 The trial court made Jacob the primary residential custodian "not *** on [the basis of] Maria's immigration status" but, rather, because the court found Jacob "to be the more appropriate custodial parent in light of the third statutory factor—given that the other statutory factors [were] equal or not applicable." We ask whether the court made a finding that was against the manifest weight of the evidence when it found that the third statutory factor (750 ILCS 5/602(a)(3) (West 2012)) favored Jacob over Maria. See *In re Marriage of Ivey*, 261 Ill. App. 3d 200, 208 (1994).

¶ 21 Again, the third statutory factor is "the interaction and interrelationship of the child with his parent or parents, his siblings and any other person who may significantly affect the child's best interest." 750 ILCS 5/602(a)(3) (West 2012). The finding that this factor favors Jacob over Maria is difficult to understand. We are aware of no evidence that A.R. interacts better, and has a better relationship, with Jacob and his family than with Maria and her family. As Jacob says in his brief, "[A.R.] is doing well in both environments in which she resides and is

a happy child." As far as we know, there simply is no evidence that A.R. has a warmer or healthier interpersonal relationship with Jacob and his family than with Maria and her family.

¶ 22 Thus, the trial court made a finding that was against the manifest weight of the evidence when it found that the third statutory factor favored Jacob over Maria. Unless something is awry in A.R.'s interaction and relationship with Maria and her family—and the record and briefs do not appear to suggest that such is the case—it is clearly evident that the third statutory factor favors Maria, considering that A.R. is more familiar with Maria and her family, having lived with them since birth. See *In re Marriage of Hefer*, 282 Ill. App. 3d 73, 77 (1996).

¶ 23 "It is wrong to allow a child to put down roots[] [and] then move [the child] to a new location without a good reason for doing so." *Id.* at 78. True, A.R. had been with Jacob during visitations, but that did not change the fact that Maria's residence was where A.R. had lived all her life. Given that the trial court's finding regarding the third statutory factor lacks evidentiary support, the court found no good reason to move A.R. from the parental household in which she had put down roots. Therefore, the court abused its discretion by moving A.R. from Maria's household and making Jacob her primary residential custodian. See *Ivey*, 261 Ill. App. 3d at 208. "It is a mistake to change custody from a good custodian in hopes that another may be better." *In re Marriage of Wycoff*, 266 Ill. App. 3d 408, 410 (1994).

¶ 24 We acknowledge that, for approximately the first two months of A.R.'s life, she lived with both parents before Jacob moved out of Maria's residence. But when the trial court subsequently transferred custody to Jacob, A.R. had lived approximately 1 1/2 years, almost her entire life, with Maria.

¶ 25 2. *The Immigration Status of Maria and Her Family*

¶ *26* In his brief, Jacob argues that because Maria and her family are illegal aliens, he can offer A.R. a more stable environment. This argument has a surface plausibility, but it is ultimately unconvincing. It is true that, theoretically, any illegal alien can be deported. The danger, however, is extremely remote. There are millions of illegal aliens in this country. Statistically, the chances are minuscule that any particular illegal alien will be apprehended and placed in removal proceedings. Kerry Abrams, *Immigration Status and the Best Interests of the Child Standard*, 14 Va. J. Soc. Pol'y & L. 87, 93 (2006). One commentator has observed:

> "In fiscal year 2002, removal hearings resulted in the deportation of 148,619 persons, of whom 77,860 were deported on a basis other than criminal charges. At this rate, accepting the lowest estimate of the undocumented population at seven million, it would take nearly ninety years to remove all current undocumented immigrants not convicted of crimes and thus brought to the attention of immigration officials. This timeline, moreover, would be longer if new arrivals are considered. The relative stability of the undocumented population is not new, and has long been recognized and grappled with by the courts." David B. Thronson, *Of Borders and Best Interests: Examining the Experiences of Undocumented Immigrants in U.S. Family Courts*, 11 Tex. Hisp. J. L. & Pol'y 45, 65-66 (2005).

Because border enforcement receives priority over interior enforcement, illegal aliens already in the country who are not involved in any criminal activity are extremely unlikely to face deportation. *Id.* at 66.

¶ 27 Admittedly, illegal aliens suffer disadvantages. For example, they cannot enter into an employment relationship. But plenty of people have worked, and thrived, as independent contractors all their lives. And we note that, beginning on November 28, 2013, illegal aliens who have resided in Illinois for more than a year may obtain a temporary visitor's driver's license, valid for three years. See 625 ILCS 5/6-105.1(a-5), (b) (West 2012) (as amended by Pub. Act 97-1157 (eff. Nov. 28, 2013)). Maria's parents have been supporting her just as Jacob's parents have been supporting him. The record does not appear to reveal any signs of instability in Maria's household or living arrangements.

¶ 28 Jacob argues that "[t]he environment in the Rosales household is one that does not abide by the laws of the State of Illinois." He "believes that [A.R.] should be raised to comply with all the laws of the United States and not try to cut corners." Being an illegal alien is indeed against the law, but it seems an exaggeration to say that the atmosphere of the Rosales household is suffused with illegality. See Thronson, *supra*, at 56 (criticizing "the dominant narrative that undocumented immigrants are different, 'other' and 'illegal' in a sense that extends well beyond immigration status"). When determining a child's best interest, "[t]he court shall not consider conduct of a present or proposed custodian that does not affect his relationship to the child." 750 ILCS 5/602(b) (West 2012). It will be years before A.R. understands the concept of legal versus illegal immigration, and by then Maria and her relatives may well receive legal authorization to be in this country. In any event, it strikes us as implausible and simplistic to assume that a child will grow up to disrespect the law simply because the child has a parent who is an illegal alien.

¶ 29 The trial court concluded that Maria's immigration status was not a valid reason to award custody to Jacob. We agree with the court in that respect. We encourage Maria, however, to move toward citizenship with all possible dispatch.

¶ 30 B. Child Support

¶ 31 1. *Conditional Gifts of Cash to Jacob*

¶ 32 The trial court ordered Jacob to pay retroactive child support for the period beginning on A.R.'s birth (November 10, 2011) and ending the day the court signed its order (April 24, 2013). See 750 ILCS 45/14(b) (West 2012) ("The Court may order any child support payments to be made for a period prior to the commencement of the action."). Under section 505(a)(1) of the Illinois Marriage and Dissolution of Marriage Act (750 ILCS 5/505(a)(1) (West 2012)), the minimum amount of child support was to be 20% of Jacob's net income. The court calculated that amount to be $767.45 a month. The court deviated downward, however, by $300 a month, given that Jacob was a college student during the period of November 10, 2011, to April 24, 2013, and given that he made independent contributions to A.R.'s needs during that period. See 750 ILCS 5/505(a)(2) (West 2012). Thus, the court set child support at "$467.45, retroactive to November 10, 2011 and terminating April 24, 2013, resulting in an arrearage of approximately $7,946.65, excluding any statutory interest."

¶ 33 Because the trial court agreed with Maria that 20% of Jacob's net income was $767.45 per month, the court must have agreed with the analysis in Maria's closing argument. She calculated Jacob's net income to be $3,837.26 per month ($3,837.26 x .2 = $767.45). To arrive at that figure, she included the amounts that Dean Hupp had deposited into Jacob's bank account over the course of eight months. She pointed out that these deposits totaled, on the average, $1,203.93 per month. Among the deposits were $1,750 for tuition, $448.74 for books, $100 for cable television, and $150 for utilities.

¶ 34 Dean Hupp testified that he felt obligated, as a father, to pay his son's way through college and that the amount of money he gave to Jacob each month "c[a]me down to what his expenses [were]. *** [I]t just depended on what[] [was] going on" in any given month.

¶ 35 The amounts of cash that Dean Hupp gave Jacob for tuition and textbooks were gifts, but they were different from the cash gifts in *Rogers* in that Dean Hupp gave Jacob these gifts on condition that Jacob would spend them on tuition and textbooks. He did not give these gifts to Jacob on the understanding that Jacob could spend them on just anything: a new motorcycle, for example, or a Rolex watch.

¶ 36 In short, the gifts of cash for tuition and books were conditional gifts, monies given on the condition that they would be spent on particular things. See *Ver Brycke v. Ver Brycke*, 843 A.2d 758, 771 (Md. 2004); *McClure v. McClure*, 870 S.W.2d 358, 361 (Tex. App. 1994); *Zirngible v. Zirngible*, 477 N.W.2d 637, 640 (Wis. Ct. App. 1991); 38 Am. Jur. 2d *Gifts* §67 (2013). If Jacob spent a cash gift on some purpose other than that which he and his father contemplated when his father delivered the gift to him, his father would have a claim against him for unjust enrichment. See *Ver Brycke*, 843 A.2d at 770; *Courts v. Annie Penn Memorial Hospital, Inc.*, 431 S.E.2d 864, 866 (N.C. Ct. App. 1993). In so many words, Jacob complains that the trial court altered the gifts by relieving them of their conditions, conditions that Jacob was bound to honor. He argues: "In essence the Court is assessing child support on Dean Hupp for his payment of college expenses for his son ***." As the giver, Dean Hupp was the master of the gift. When delivering a gift, he could attach to it any condition he desired. He did not intend gifts to be spent on child support if he gave them to be spent on tuition and books. Jacob argues that the trial court places him in an untenable position by disregarding the conditions that he was obliged to obey.

¶ 37 In *Rogers*, by contrast, the gifts appeared to be absolute. The father's parents gave him a total of $46,000 in cash each year (*Rogers*, 213 Ill. 2d at 133), and the opinion does not mention that the gifts had any strings attached. It does not appear that the father and his parents had an understanding the monies would be applied to any particular purpose.

¶ 38 The supreme court held that these absolute gifts of cash were "income" within the meaning of section 505(a)(3) of the Illinois Marriage and Dissolution of Marriage Act (750 ILCS 5/505(a)(3) (West 2002))—income that a court should take into account when determining the amount of child support the father had to pay. *Rogers*, 213 Ill. 2d at 137.

¶ 39 In justification of its holding, the supreme court reasoned: "[The cash gifts] represented a valuable benefit to the father that enhanced his wealth and facilitated his ability to support [the child]." *Id.* Recently, the supreme court reiterated: " '[I]ncome' includes gains and benefits that enhance a noncustodial parent's wealth and facilitate that parent's ability to support a child or children." *In re Marriage of Mayfield*, 2013 IL 114655, ¶ 16. Thus, "income" is a gain or benefit that both adds to the noncustodial parent's wealth and makes it easier for the noncustodial parent to support the child.

¶ 40 Any conditional gift of cash adds to the donee's wealth, provided that the condition is fulfilled and the donee consequently gets to keep the cash (see *Ver Brycke*, 843 A.2d at 771; *Zirngibl*, 477 N.W.2d at 640). See *Mayfield*, 2013 IL 114655, ¶ 16. Not every conditional gift of cash, however, "facilitates" the support of a child, that is, makes it easier for the donee to support a child. See *id.* It depends on the condition attached to the gift. If the condition is that the gift of cash be spent for a particular purpose, it depends on what that purpose is.

¶ 41 The tuition money and book money added to Jacob's wealth. See *Mayfield*, 2013 IL 114655, ¶ 16. But because these gifts had to be spent on tuition and books and on nothing else, these gifts did not make it easier for Jacob to support a child. See *id.* The record affords no basis for supposing that Jacob, who was unemployed, could have paid the tuition and bought the books out of his own pocket if Dean Hupp had not given him the money for those things. Consequently, by giving Jacob money for tuition and books, Dean Hupp did not enable Jacob to divert his own money from those purposes and to apply it toward child support. One cannot assume that Jacob, struggling on his own to make a living, would have had money to spend on higher education. We conclude, therefore, that the trial court abused its discretion by counting, as income to Jacob, the conditional gifts of cash for tuition and books. See *In re Parentage of Janssen*, 292 Ill. App. 3d 219, 223 (1997) ("The standard of review for a current or retroactive child support award in paternity cases is whether the award is an abuse of discretion or the factual predicate for the decision is against the manifest weight of the evidence.").

¶ 42 2. *Other Gifts*

¶ *4*3 a. Rent

¶ 44 For $800 a month, Dean Hupp rents a townhouse, which he allows Jacob to use. As the lessee obligated on the lease, Dean Hupp pays the landlord directly.

¶ 45 The use of the townhouse has value and thus adds to Jacob's wealth. See *Mayfield*, 2013 IL 114655, ¶ 16. Securing a dwelling place is something Jacob would have had to do in any event, and by relieving Jacob of that financial burden, Dean Hupp has made it easier for Jacob to support A.R. See *id.* Therefore, the trial court did not abuse its discretion by counting, as income to Jacob, the $800 a month in rent that Dean Hupp pays directly to the landlord.

¶ 46 b. The Use of a Car

¶ 47 The trial court counted, as income to Jacob, the full purchase price of a car, $16,000. Dean Hupp bought this car and allowed Jacob to use it. The court abused its discretion in this respect, considering that Dean Hupp, rather than Jacob, is the owner of the car.

¶ 48 Granted, the use of a car is valuable, and it is income: it is a benefit that adds to Jacob's wealth and makes it easier for him to support A.R., by enabling him to travel to and from a job, for instance. See *id.* But the *use* of the car must be valued. Counting the purchase price as income to Jacob falsely assumes that he owns the car.

¶ 49 c. Family Vacations

¶ 50 Jacob went on three all-inclusive family vacations, for which Dean Hupp paid. The trial court counted these vacations as income to Jacob. This was not an abuse of discretion. Arguably, Jacob could have been working, and earning child support, during these vacations.

¶ 51 III. CONCLUSION

¶ 52 For the foregoing reasons, we reverse the trial court's judgment and remand this case with directions to award Maria sole custody of A.R., with liberal, workable visitation for Jacob, and to redetermine child support. Given our reversal of the child support award and our remand for redetermination of child support, the downward deviation is moot.

¶ 53 We caution that the visitation schedule must give some permanency to the physical custody of A.R. and not simply attempt, even temporarily, to equalize the time A.R. spends with each parent, through a week-on, week-off schedule. See *In re Marriage of Swanson*, 275 Ill. App. 3d 519, 524 (1995); *In re Marriage of Hacker*, 239 Ill. App. 3d 658, 661 (1992). "[O]ne of the most robust findings in the research literature" is that "[c]hildren do not necessarily benefit from more time with the non-custodial parent." Elizabeth Ellis, *What have*

we Learned from 30 Years of Research on Families in Divorce Conflict?, http://www.familylawwebguide.com.au/library/spca/docs/Families%20in%20Divorce%20Conflict.pdf (last visited Sept. 23, 2013). "[H]ow often fathers see their children is less important than what they actually do with them." *Id.* In the present case, usual visitation might be, for instance, one or two extended weekends per month, consistent with the parties' school and/or employment schedules. As before, the meeting point for pick up might be a midway point between Westchester and Springfield.

¶ 54 Reversed; cause remanded with directions.